HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 819 (M/S) of 2003
Committee of Management
Doon Valley Officers Cooperative
Housing Society Ltd.

Vs.

The Secretary to Govt. Sahakarita Vibhag.
Uttaranchal Shasan Dehradun & others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 22.06.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 819 (MS) OF 2003

Committee of Management,
Doon Valley Officers' Cooperative Housign Society Ltd.,
Vasant Vihar, Dehradun.
Through its Secretary Dr. A. Jakhmola.

.....Petitioners.

Versus

1. The Secretary to Govt. Sahakarita Vibhag, Uttaranchal Shasan, Dehradun.
2. The Registrar Cooperative Societies, Uttaranchal, Champ Dehradun.
3. Shr A.B. Bahuguna,
   S/o Sri T.R. Bahuguna,
   701 Suraj Vasundhara,
   Thakur Village Kandivali (E),
   Mumbai.
4. Shri P.S. Bhinder,
   S/o Sri Keshar Singh,
   19 Safdarjang Road, New Delhi.
5. Shri Yashpal Singh,
   S/o not known,
   G.M. Tehri Dam Division, II,
   Rishikesh, Distt. Dehradun.
6. Shri Ishwari Datt,
   S/o Sri Ganga Datt,
   C/o Dr. B.K. Ali,
   49 Hylton Road, Dehradun.

7. Shri M.M. Dhar,
S/o not known,
Central Drug Research Institute,
Post Box No. 173 Lucknow.
8. Shri N.K. Bhatia,
S/o Lt. Col. D.C. Bhatia,
8 Soelt Flats National Institute of Sports old Moti Bag
Patiyala, P.B..
9. Shri H.S. Jethwani,
S/o not known,
204 Arahghar, Dehradun (U.A.)
10. Shri G.R. Joshi,
S/o Shri R.R. Joshi,
C/o M.D. Semwal,
5-3/4 Hylton Road, Dehradun (U.A.).
11. Shri Rajiv Dabral,
S/o Shri B.G. Dabral,
706, Mittha Towers, Section-17,
Vashi, New Delhi.
12. Shri P.C. Nautiyal,
S/o Shri M.P. Nautiyal,
5/2 Balbir Road Dehradun.
13. Shri G.K. Pant,
S/o Shri J.C. Pant,
45 Saraswati Soni Marg,
Dehradun.
14. Shri Amitesh Pant,
S/o Shri P.C. Pant.
9/A-1 Sunder Bagh Towers,
Pratap Nagar Road,
Vadhodhara (Gujrat).
15. Shri Ram Gopal

S/o Shri Bhagwan Singh,
270/5, Thapar Nagar, Meerut.

16. Shri Shri Krishna,
S/o Shri Sunder Lal,
53-47 B, Kishan Garh,
Idgah Agra.

17. Shri Rakesh Bahadur,
S/o Shri Onkar Bahadur,
61 Rajpur Road, Dehradun.

18. Shri Vijay Kumar,
S/o Shri R.D. Lal,
Chawkiyana, Mainpuri (U.P.).

19. Shri Atul Chaturvedi,
S/o Shri P.N. Chaturvedi,
B-13 Butlar Place Colony,
Lucknow.

20. Shri Vijendra Paul,
S/o Shri Mushadi Lal,
Secretary Food and Civil Supplies,
Secretary, Uttaranchal, Dehradun.

21. Shri Madan Pal Singh,
S/o Shri Saudagar Singh,
40-F, Sardar Patel Marg, Civil Lines,
Allahabad (U.P.)

22. Shri P.K. Pant,
S/o Shri B.C. Pant,
IGNFA,
P.O. New Forest Dehradun.

23. Shri Pramod Pant,
S/o Shri Ghanshyam Pant,
296/1 Vasant Vihar,
Dehradun (U.A.). .....Respondents.

&

WRIT PETITION NO. 820 (MS) OF 2006

Committee of Management,
Doon Valley Officers' Cooperative Housing Society Ltd.,
Vasant Vihar, Dehradun.
Through its Secretary Dr. A. Jakhmola.

.....Petitioners.

Versus

1. The Secretary to Govt. Sahakarita Vibhag, Uttaranchal Shasan, Dehradun.
2. The Registrar Cooperative Societies, Uttaranchal, Champ Dehradun.
3. Ram Gopal,
   S/o Shri Bhagwan Singh,
   270/5, Thapar Nagar,
   Meerut (U.P.). .....Respondents.

&

WRIT PETITION NO. 821 (MS) OF 2006

Committee of Management,
Doon Valley Officers' Cooperative Housing Society Ltd.,
Vasant Vihar, Dehradun.
Through its Secretary Dr. A. Jakhmola.

.....Petitioners.

Versus

1. The Secretary to Govt. Sahakarita Vibhag, Uttaranchal Shasan, Dehradun.

2. The Registrar Cooperative Societies, Uttaranchal, Champ Dehradun.
3. Smt. Sushila Sharma, W/o Shri Ram Saran,
R/o Care 179, Panditwari Dehradun.
4. Shri R P Singh,
S/o Shri Sher Singh,
R/o 14, Civil Lines, Manipuri (U.P.).

.....Respondents.

&

WRIT PETITION NO. 822 (MS) OF 2006

Committee of Management,
Doon Valley Officers' Cooperative Housing Society Ltd.,
Vasant Vihar, Dehradun.
Through its Secretary Dr. A. Jakhmola.

.....Petitioners.

Versus

1. The Secretary to Govt. Sahakarita Vibhag, Uttaranchal Shasan, Dehradun.
2. The Registrar Cooperative Societies, Uttaranchal, Champ Dehradun.
3. Shri Babu Ram,
9/30, Survodaya Colony,
Lucknow. .....Respondents.

&

Dated: 22.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri R. Dobhal & K.D. Sharma, Advocate for the petitioner, Sri U.K. Uniyal, Sr. Advocate, assisted by Sri Shobit Saharia, Sri Alok Singh, Sr. Advocate, and Sri D.S. Patni, Advocate for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the orders No. 691 dated 28.11.2002, Order No. 693 dated 28.11.2002, No. 689 dated 27th November, 2002, No. 692 dated 28.11.2002 passed by the respondent no. 2 and order Nos. 1056 dated 21.03.2003 & 160 dated 30.05.2003 passed by the respondent no.1 in the nature of Article 227 of the Constitution of India.

Briefly stated, the contesting respondents are members of the Society known as Doon Valley Officers Cooperative Housing Society Ltd., Dehradun. The society has been registered under the Societies Registration Act and is governed by the U.P. Cooperative Societies Act, 1965 having its Registration No. 723 dated 07.06.1966.

The society has framed its byelaws under the provisions of the U.P. Cooperative Societies Act, 1965 and the rules under the U.P. Cooperative Societies Rules, 1968.

According to the counsel for the petitioner, the main object of the society is to provide plots to its members for the construction of their houses and for that purpose, the society had purchased lands and developed the same carved out plots and has allotted all 656 plots to its members about 15 to 30 years ago.

Clause (50) of the byelaws provides that if the member has failed to complete the construction work of the residence within the stipulated period or extended time as mentioned in the byelaws, then the Society will have a right to take over the plot. Sub clause 51 of the byelaws are quoted below:-

"51. यदि सदस्य उक्त अपविधि द्वारा निर्धारित अथवा बढ़ाई गई अवधि जैसी अवस्था हो, के भीतर निर्माण कार्य करने में असफल रहता है तो समिति को अधिकार होगा कि वह सदस्य को प्रदिष्ट गाटे का प्रतिदान देकर जिसकी धनराप्रि सदस्य द्वारा समिति को दिये गये मूल्य से अधिक न होगी, जब्त कर लें। प्रतिबन्ध यह है कि जब्त किये जाना वाला गाटा/प्लाट का आबंटन किसी अन्य सदस्य के नाम उस समय समिति द्वारा जारी नहीं किया जायेगा जब तक कि सम्बन्धित सदस्य के विरूद्व निबन्धक का अधिनियम की धारा 71 के अन्तर्गत गाटा/प्लाट जब्त करने के पूर्व प्रस्तुत अभिदेप्र पर निर्णय नहीं हो जाता ।"

According to the case of the petitioner, the contesting respondent(s) became the member of the society with an undertaking to get the construction made within the stipulated period as per provisions of the byelaws.

According to the petitioner, notices were issued to the respective members for non compliance of the byelaws of the society by not constructing the plots within the stipulated period and also getting the plot seized on account of not filing the byelaws.

The Registrar Cooperative Societies on the representation made by the members of the society passed an order under Section 128 of the U.P. Cooperative Societies Act and on 27/28th September, 2002 under Section 128 of the Act the resolution was declared as null and void declared the result as null and void. The Manager aggrieved by the order passed by the Registrar Cooperative Societies filed the appeal. The appellate Authority before entertaining the appeal has passed the order that the appeal has not been filed according to the procedure and the same has various defects and therefore, the same cannot be entertained for hearing. The order passed is being quoted below:-

"कृपया अपने पत्र संख्या 6908 दिनांक 07.03.2003 का संदर्भ लें, आपके द्वारा प्रस्तुत 4 अपीलें निम्न आधार पर सुनवाई हेतु स्वीकार नहीं की जा सकती,

1. अपीलें उत्तर प्रदेप्र सहकारी अधिनियम 1965 की धारा 98 में निहित समय सीमा के अर्न्तत प्रस्तुत नहीं की गइ। हैं अतएव काल बाधित है.

2. अपील पत्रों के साथ समिति की प्रबंध समिति द्वारा अपील प्रस्तुत किये जाने के संबंध में पारित किसी प्रस्ताव की प्रति संलग्न नहीं की गई है जोकि अवावप्र्यक है."

As will appear form the order that the appeal has been held to be not maintainable on account of certain defects on the aforesaid two grounds and therefore, since the appeal itself was incompetent, the appeal was not taken for hearing.

The petitioner instead of rectifying the defect has preferred a review also, which was also rejected. The State, thereafter, has

A perusal of the order passed on the review application, where it has been stated as under:

"दून वैली आफिसर्स को–आपरेटिव हाउसिंग सोसइटी लि0 द्वारा उ0प्र0 सहकारी समिति अधिनियम 1965 की धारा 99 के अन्तर्गत सचिव, सहकारिता उत्तरांचल शासन के निर्णय सं0 1 0 5 6 दिनांक 21 . 03 . 03 के विरूद्व प्रस्तुत किये गये पुनर्विचार के आवेदन पत्र को एतद्द्वारा सम्यक विचारोपरान्त निरस्त किया जाता है। "

As pointed out by the State Government, the petitioner has not annexed the copy of the resolution and as such the appeal Court as well as the review both were rejected.

A perusal of Section 98 (n) shows as under:-

"(n) an order passed by the Registrar under Section 128 annulling any resolution or canceling any order, may, within thirty days of the communication of the order, decision or award to be appealed against, be preferred by the aggrieved party to the authorities mentioned in sub-section (2) in the manner prescribed.]"

As will appear from Clause(n) of Section 98 of the U.P. Cooperative Societies Act, the appeal is not maintainable only against an order passed by the Registrar annulling any resolution, the petitioner has sought cancellation of the resolution or annulling the same, but having not annexed the same, the appeal was not held to be maintainable for hearing.

So far as the question of time limit is concerned, unless and until, the resolution by which the annulling has been claimed is annexed the appeal is not maintainable.

Counsel for the petitioner has pointed out Rules 260 of the U.P. Cooperative Societies Rules to the following effect:-

"260. Where the appellate authority finds that the appeal presented before it does not conform to any of the relevant provisions of the act or the rules, it shall make a note to that effect and may call upon the appellant to remove the defect within the specified period, or ion case the appeal appears not to have been presented within the prescribed time or by a person competent to do so, to show cause within the specified period, why it should not be rejected".

As will appear from the order dated 7th March, 2003, the petitioner has neither filed any application for removing the defect nor asked for any time for curing the defect.

However, the appellate Court has pointed out that in absence of resolution, which has been sought to be annulled, the appeal cannot be heard. The petitioner instead of removing the defect filed a revision petition and the review petition was rejected with the same resolution that the appeal cannot come for hearing since the resolution is annexed.

Petitioner could not point out a single order by which the defects were sought to be removed by the petitioner as pointed out in the order dated 21st March, 2003. The appeal has not yet been rejected by the appellate Authority. The appellate

Authority has only pointed out that the same cannot come up for hearing due to the defects. The defects having not been cured and the appeal remains pending, as the appeal was filed without annexing the copy of the resolution and without the application under Section 5 of the Limitation Act. However, the defects pointed out in the order were liable to be cured by filing the application and not by involving the jurisdiction under Article 226/227 of the Constitution of India and as such the exercise being premature, no interference is required.

Apart from that the perusal of the record and the judgment passed by Registrar shows that the plots were given to various members and from time to time they applied for the sanction of the map, time was extended and the some of the members are in process of construction. However, it is apparent from the record of the case that the sale deed has already been executed in favour of some of the persons and some of the members have made part payment.

I find that a valuable right has accrued to the members of the society, who have not deposited the amount some of the members and as such the Registrar has taken the steps to annul the resolution and has revoked the same.

Learned counsel for the petitioner has referred ***Ram Autar Garg Vs. Risia Sahkari Kraya Vikraya Samiti Ltd., 1984 A.L.J. 126,*** where it has been stated that when the appeal is presented beyond time, the rejection of appeal without asking appellant to show cause is illegal. In the present case, the aforesaid decision is not applicable. By order dated 21st March 2003, the appellate authority has only directed to cure the defects before the appeal comes up for admission.

In view of the above, no interference can be made under Article 226/227 of the Constitution as the remedy lies with the

petitioner to cure the defect in order to get the appeal heard in accordance with law.

In view of the above, all the writ petitions fail and are dismissed.

(Rajesh Tandon, J.)

22.06.2006
Rathour